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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/220,955	12/28/1998	DONALD WAYNE FEDYK	77682-17	5397

7590

04/24/2002

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EXAMINER

DUONG, DUC T

ART UNIT

PAPER NUMBER

2663

DATE MAILED: 04/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

B

# Office Action Summary

Application No.

09/220,955

Applicant(s)

FEDYK ET AL.

Examiner

Duc T. Duong

Art Unit

2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 December 1998.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 13, 14, 16, 18 and 20 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 6-12, 15, 17 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 5, 13, 16, 18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Callon (U.S. Patent 5,699,347).

Regarding to claims 1, 16, and 20, Callon discloses a communication network (Fig. 9) and method (Fig. 11) for a node A, B, C (col. 13 lines 46-47) to select a gateway from among at least two gateways 402-412 (col. 13 lines 47-51), comprising the steps of storing (Fig. 7 col. 10 lines 55-57) information associating a metric (distance), see Fig. 5 A col. 7 lines 22-24) with each gateway with respect to each of one or more destinations; upon receiving a connection request to a destination 462 (Fig. 11 col. 15 lines 19-21), the further steps of deterministically selecting a first gateway having an optimum metric with respect to the destination and sending a connection request to the first gateway 468 (Fig. 11 col. 15 lines 22-25); if a connection can not be established to the destination via the first gateway, randomly selecting a second gateway from among the gateways other than the first gateway, and sending a connection request to the second gateway 470 and 474 (Fig. 11 col. 15 lines 28-42).

Regarding to claim 4, Callon discloses the step of randomly selecting a second gateway (Fig. 10) applies a weighting factor (efficiency) to each gateway, the weighting factor taking into account the metric of each gateway with respect to the destination (col. 14 lines 34-35).

Regarding to claim 5, Callon discloses the step of randomly selecting a second gateway is further limited to the gateways whose metric with respect to the destination is within a pre-set range (feasible), see col. 14 lines 32-34.

Regarding to claim 13, Callon discloses the metric represents an approximation to a cost of reaching the destination with which the metric is associated through the gateway with which the metric is associated (col. 7 lines 37-39).

Regarding to claim 18, Callon discloses a node 300 (Fig. 7) comprising a memory 306 (col. 10 lines 53-55) for storing information associating a metric with each of one or more gateways with respect to each of one or more destinations reachable through the respective gateways and a routing engine 302 (col. 10 lines 55-61) with means for launching a connection request to a selected gateway and means for selecting the selected gateway which deterministically selects a first gateway having an optimum metric with respect to a destination, and if a connection can not be established to the destination via the first gateway, randomly selects a second gateway from among the gateways other than the first gateway.

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Callon in view of Huang et al (U.S. Patent 6,301,244 B1).

Regarding to claim 14, Callon discloses all the limitation with respect to claim 1, includes a metric represents of cost (col. 7 lines 37-39). But, Callon fails to teach for a metric represents an approximation to the delay that would be experienced by a user if the connection route was established to the destination with which the metric is associated through the gateway with which the metric is associated.

However, Huang teaches for a route selection using a metric represents of delay (Fig. 3 lines 11-31).

Thus, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to use the metric represents of delay as taught by Huang in Callon's system with the motivation support live video and audio data communication of which cannot tolerate excessive delay.

#### ***Allowable Subject Matter***

5. Claims 2, 3, 6-12, 15, 17, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 703-605-5146. The examiner can normally be reached on M-Th (8:30 AM-5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 703-308-5340. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-9600.

DD  
April 17, 2002

  
4/19/02

**Attachment for PTO-948 (Rev. 03/01, or earlier)**  
**6/18/01**

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

**INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

**1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

**2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

**Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.